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In re Application of
HICKS et al
Application No.: 09/230,275
PCT No.: PCT/US97/13321
Int. Filing Date: 23 July 1997
Priority Date: 24 July 1996
Attorney's Docket No.: 5093
For: CHOLESTEROL SEPARATION AND
FLUORESCENT ANALYSIS

DECISION ON

PETITION UNDER

37 CFR 1.137(b)

This is in response to the "Petition To Revive Unintentionally Abandoned Application"
filed on 14 July 2001,

BACKGROUND

On 23 July 1997, this international application was filed, claiming an earliest priority date
of 24 July 1996.

On 18 February 1998, a Demand electing the United States was filed in this international
application. Accordingly, the deadline for paying the basic national fee in the United States under
35 U.S.C. 371 and 37 CFR 1.495 was 24 January 1999.

On 22 January 1999, applicant filed a transmittal letter for entry into the national stage in
the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee.

On 07 July 1999, the United States Designated/Elected Office mailed a Notification of
Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or
declaration complying with 37 CFR 1.497(a) and (b) must be furnished within the time period set
forth. The notification set a one month time limit or 31 months from the priority date for the
application, whichever is later to respond.

On 02 March 2000, the United States Designated/Elected Office mailed a Notification of
Abandonment (Form PCT/DO/EO/909) indicating that applicant has failed to respond to the
Notification of Missing Requirements (Form PCT/DO/EO/905) mailed on 07 July 1999 within the
time period set therein.

Application No. 09/230,275

On 30 March 2000, petitioner submitted a petition "Petition to Withdraw Notification of Abandonment" filed via facsimile requesting the USPTO to withdraw the holding of abandonment. Petitioner alleged that the Notification of Missing Requirement mailed 07 July 1999 was never received.

In a decision from this Office on 22 May 2000, the petition was dismissed. The decision stated that the petition did not satisfy item (3) of MPEP section 711.03(c) because it required counsel to provide a copy of the docket record(s) where the nonreceived Office communication would have been entered had it been received and docketed. This was not provided. Accordingly, the application remained abandoned.

On 12 June 2000, petitioner submitted a "Renewed Petition Under 37 CFR 1.181 To Withdraw Notification Of Abandonment."

In a decision from this Office on 13 June 2001, the renewed petition was dismissed. The decision stated that the petition had not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and that withdrawal of the abandonment of the application at such time would not be appropriate.

On 14 July 2001, petitioner submitted the instant petition under 37 CFR 1.137(b). The petition was accompanied by, *inter alia*, the petition fee. No executed oath or declaration accompanied the above papers.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

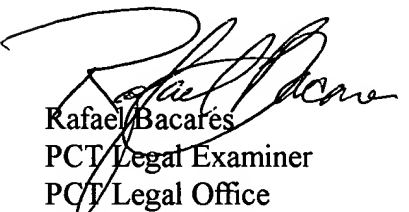
With respect to item (1), petitioner has not provided the proper reply because an executed declaration or oath has not been submitted.

Accordingly, the petition is deemed to not to satisfy requirement (1) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.137(b) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Failure to timely submit the proper reply will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." Extensions of time are available under 37 CFR 1.136(a).



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Enclosed: A copy of the Notification of Missing Requirements mailed on 07 July 1999.